Supreme Court, U.S.
FILED

931423 JAN 14 1994

OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1993

YORK RITE BODIES OF FREEMASONRY OF
SAVANNAH, ET AL.

PETITIONERS

vs.

BOARD OF EQUALIZATION OF CHATHAM COUNTY,
ET AL.

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA AND THE COURT OF APPEALS OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

J. Walter Cowart
Counsel of Record
State Bar No. 191500
7220 Waters Road
Savannah, GA 31406
(912) 355-5111

46 pp

QUESTIONS PRESENTED

I. IS IT CONSTITUTIONALLY PERMISSIBLE FOR A STATE APPELLATE COURT TO GERRYMANDER OR ARRANGE ITS MEMBERS, EXCLUDING BY DISQUALIFICATION MEMBERS OF AN IDENTIFIABLE CLASS OR GROUP (AS A FRATERNAL ORDER) IN ORDER TO INSURE OR MAKE MORE PROBABLE A DESIRED JUDGMENT?

II. DID THE RECENT RASH OF ANTI-MASONIC SENTIMENT, FUELED IN LARGE PART BY THE HIGHLY PUBLICIZED SOUTHERN BAPTIST CONVENTION DEBATE, WHICH WAS BASED UPON A FALSE PREMISE AS TO THE MASONS, UNFAIRLY INFLUENCE THE "ARRANGEMENT" OF THE APPEALS COURT, AND ADVERSELY EFFECT THE JUDGMENT OF THE COURT OF APPEALS AND DENIAL OF CERTIORARI BY THE SUPREME COURT?

III. DID THE COURT OF APPEALS OF GEORGIA, AND SUBSEQUENTLY THE SUPREME COURT OF GEORGIA EXCEED ITS AUTHORITY AND LIMITATIONS UNDER O.C.G.A. SECTION 15-1-8 IN ITS DISQUALIFICATION OF REGULAR JUSTICES

AND JUDGES AND SUBSTITUTION OF SUPERIOR COURT JUDGES AND A SENIOR JUDGE UNDER O.C.G.A. SECTION 15-1-9.1?

IV. DID THIS ACTION BY THE GEORGIA APPEALS COURTS CAUSE HARMFUL ERROR OF CONSTITUTIONAL PROPORTIONS TO PETITIONERS?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT BELOW

Parties:

Thunderbolt Lodge No. 693, F&AM of Georgia, and York Rite Bodies of Freemasonry of Savannah, Georgia, Petitioners;

Board of Equalization of Chatham County, Georgia, and Chatham County Board of Tax Assessors, Respondents

Attorneys:

Counsel for Petitioners:
J. Walter Cowart
7220 Waters Avenue
Savannah, Georgia 31406
State Bar No. 191500

Gordon B. Smith
1820 Abercorn Street
P.O. Box 10041
Savannah, Georgia 31412
State Bar No. 658200

Counsel for Respondents:
R. Stephen Sims
Barrow, Sims, Morrow & Lee P.C.
P.O. Box 8185
Savannah, Georgia 31412
State Bar No. 64855

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....i

LIST OF ALL PARTIES TO THE PROCEEDINGS IN THE COURT BELOW.....iii

TABLE OF CONTENTS.....iv

TABLE OF AUTHORITIES.....iv

OPINIONS BELOW.....1

STATEMENT OFJURISDICTION.. 1

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED.....4

STATEMENT OF THE CASE.....4

REASONS FOR GRANTING THE WRIT.....18

CONCLUSION.....37

APPENDIX.....ATTACHED SEPARATELY

TABLE OF AUTHORITIES

CASES:

Blakeman vs. Harwell, Executor, et al., 198 Ga. 165, 31 SE2d 50 (1944)

Daniel vs. Yow, 226 Ga. 544, 176 SE2d 67 (1970)

Dominquez vs. Enterprise Leasing Company, 197 Ga.App. 664, 399 SE2d 269 (1990)

Mapp vs. State, 204 Ga.App. 647, 420 SE2d 615 (1992)

Massenburg vs. Grand Lodge of Georgia, 81 Ga. 212, 7 SE 636 (1888)

Mu Beta Chapter and House Corp vs. Davison, 192 Ga. 124, 14 SE2d 744 (1941)

Odom et al. vs. Langston, et al., 356 Mo. 1140, 205 SW2d 518 (1947)

Robinson vs. The State, 86 Ga.App. 375, 71 SE2d 677 (1952)

State vs. Sams, 210 SE2d 916, 75 A.L.R. 3rd 1017 (W.Va. 1975)

Thomas et al. vs. Northeast Georgia Council, Inc., Boy Scouts Of America, 241 Ga. 291, 244 SE2d 842 (1978)

Thompson, Lt. Gov. et al. vs. Talmadge, 201 Ga. 867, 41 SE2d 883 (1947)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 261 Ga. 558, 408 SE2d 699 (1991)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 198 Ga.App. 147, 401 SE2d 30 (1991)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of A Equalization, 209 Ga.App. 359 (1993)

CONSTITUTIONAL PROVISIONS:

Constitution of the United States. Amendment XIV, Section I. (Appx. X)

Constitution of Georgia
Article I, Section I, Paragraph I.
(Appx. X)

Constitution of Georgia
Article I, Section I, Paragraph II.
(Appx X)

STATUTES:

O.C.G.A., Section 15-1-8. (Appx. P)

O.C.G.A., Section 15-1-9.1. (Appx. O)

O.C.G.A., Section 48-5-41 (a)(4).
(Appx. N)

OTHER AUTHORITIES:

Rule 18(c) of Court of Appeals of Georgia. (Appx. Q)

Rule 61 of the Supreme Court of the State of Georgia. (Appx. J)

OPINIONS BELOW

October 28, 1993, Denial of Motion for Reconsideration of Denial of Application for Certiorari (Appx. M)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 198 Ga.App. 147, 401 SE2d 30 (1990) (Appx. B)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 261 Ga. 558, 408 SE2d 699 (1991) (Appx. W)

York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 209 Ga.App. 359, 433 SE2d 299 (1993) (Appx. A)

STATEMENT OF JURISDICTION

To the Honorables the Chief Justice and Associate Justices of the Supreme Court of the United States.

This Court's jurisdiction is invoked under 28 U.S.C.A. Section 1257.

The Judgment of the Supreme Court of Georgia dated October 28, 1993, denied Petitioners' Motion for Reconsideration of the Court's denial of Application for Certiorari from the Court of Appeals of Georgia entered June 1, 1993, and this

Petition for Certiorari to the U. S. Supreme Court was filed within 90 days of that date, October 28, 1993.

York Rite Bodies of Freemasonry of Savannah, et al., Petitioners, herein pray that the Writ of Certiorari issue to review the Judgments of the Supreme Court of Georgia dated October 28, 1993, and September 20, 1991, as well as the Judgments of the Court of Appeals of Georgia dated November 27, 1990, and June 1, 1993. Review of the Judgments of both Courts is essential to show the apparently intentional arranging of the Judges and Justices of the Georgia Appellate Courts to insure Petitioners' loss of the case. This re-arrangment disqualified and excluded the regular Court members who were or had been members of Freemasonry.

This is an Application for the correction of errors arising out of the

official conduct of both Appellate Courts of Georgia, such conduct being the systematic disqualification of all regular Court members who were or had been members of Freemasonry, and substituting those disqualified with known non-Masons. This conduct was in excess of the authority allowed under O.C.G.A. Sec. 15-1-8, and was error of Constitutional proportions and fatal to Petitioners' cause. That those Judges and Justices disqualified were Masonically connected was not known by the Petitioners until after the denial of Motion of October 28, 1993, but the irregularity of the disqualifications was clearly raised on four subsequent occasions during the appeals process as being harmful error. Given the nature and content of the errors here alleged, all Petitioners' remedies in the Georgia Appellate Courts are exhausted.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The United States Constitution.
Amendment XIV, Section I.
(Appx. X)

The Georgia Constitution.
Article I, Section I, Paragraph I.
(Appx. X)

The Georgia Constitution.
Article I, Section I, Paragraph II.
(Appx X)

O.C.G.A., Section 15-1-8. (Appx. P)

O.C.G.A., Section 15-1-9.1. (Appx. O)

O.C.G.A., Section 48-5-41 (a)(4).
(Appx. N)

STATEMENT OF THE CASE

This latter denial of Equal Protection and due process became known for a certainty only after the denial by the Supreme Court of Georgia of the Application for Certiorari (October 5, 1993) and denial of Motion to Reconsider of October 28,

1993, although the irregularity of the Court's disqualifications and composition for review of this case was raised clearly on four occasions, and shown verbatim in the Appendix hereto.

In order to show the systematic disqualification of the Masons from the panel of both Appellate Courts and their replacements by non-masons, the affidavit of the Grand Secretary of the Grand Lodge of Georgia, F&AM, and of Counsel of Record hereof, is necessary to positively show that covert prejudice-bias occasioned the disqualification of the Masonically connected members of the Courts and their replacement by Non-masons. This we assert, when known, is the unconstitutional activity complained of, even if the Judges and Justices of the Courts are permitted under Georgia law to recuse or disqualify

without limitation under O.C.G.A. Sec. 15-1-8 and O.C.G.A. Sec. 15-1-9.1.

This question is not raised here for the first time; it was first raised in the Motion for Rehearing dated December 6, 1990, (See Appx. D) following transfer from the Supreme Court of Georgia to the Georgia Court of Appeals on January 11, 1990, in which case six of the nine regular judges of the Court of Appeals were "disqualified," and replaced by five Superior Court Judges and one Senior Appeals Court Judge, where a majority of that Court, consisting of two regular Court judges and four of the Superior Court judges affirmed the trial judge in his judgment against these Appellants, after a delay in the Court of about ten and one-half months. A strong and factually accurate dissenting opinion was written.

It was again raised in the January 1991, Application for Certiorari in the Supreme Court of Georgia (See Appx. E) following a denial by the Court of Appeals of the Motion for Rehearing. The Writ of Certiorari was granted and two Justices disqualified, (Appx. R) (substituted by Superior Court Judges (Appx. S). The Supreme Court reversed the Court of Appeals on other grounds, and remanded the case for a more thorough evidentiary hearing. The question of "irregularity" of the Court's composition was not addressed by the Supreme Court.

After completion of the evidence, following the remand, the trial judge (same trial judge) rendered judgment in favor of Appellants on October 2, 1992 (Appx. T). The Tax Assessor appealed to the Court of Appeals of Georgia; these Appellants (Appellees there) filed their

response brief, making motion to transfer, or to certify the case to the Supreme Court of Georgia for review, due to the denial of equal protection of the law, that of unequal treatment by the Assessor, of which the trial judge obviously took notice, based upon the evidence. This Motion and Prayer was avoided or denied by the Court of Appeals.

On June 1, 1993, the trial court was reversed by a three judge panel of the Court of Appeals of Georgia, in the face of the well established rule of law in Georgia that "findings of trial courts in non-jury trials shall not be set aside unless clearly erroneous" and then finding as a basis for its judgment stated; "these findings are not supported by <u>any</u> evidence and are therefore clearly erroneous." (Emph. ours) <u>York Rite et al. v. Board of</u>

Equalization, 209 Ga. App. 359, 433 SE2d 299 (1993). (Appx. A)

On June 7, 1993, these Appellants filed their Motion for Rehearing (Reconsideration) and for full bench review to the Court of Appeals, which was avoided or denied by the Court, in its denial of the Motion to Reconsider dated July 8, 1993 (Appx. F).

The question of possible bias or prejudice in the composition of the Court which we asserted was at a minimum irregular, was again raised in the Appellants Application for Certiorari to the Supreme Court of Georgia of July 29, 1993 (Appx. G). Without comment the Supreme Court denied the Application for Certiorari. "All the Justice concur except Benham and Carley J.J. disqualified."

The question of the Court's composition was for the fourth time clearly

raised in the Motion for Reconsideration of Denial Petition for Certiorari and Full Bench Decision (Appx. H). The Supreme Court of Georgia was again asked to review this question. The Court again denied the Motion, with Benham and Carley being again disqualified.

Also, filed along with the Application for Certiorari was a Motion to Stay Remittitur (Appx. I), Notice of Intent to Petition the Supreme Court of the United States for Writ of Certiorari, pursuant to Rule 61 of the Supreme Court of Georgia, (Appx. J) in which we charge violation of certain constitutional guarantees involving the large number of judicial disqualifications as adversely affecting those guarantees.

Thus, the Court of Appeals of Georgia and the Supreme Court of Georgia had an abundance of notice of the seriousness and

importance of the question of judicial qualifications, and ample opportunity to address the question, but did not do so, to the detriment of these Movants and the fraternal class of which they are a part.

At the outset, when the irregularity of the Court's composition was first questioned, it was necessarily based on assumption and speculation, and it was suggested by Appellants that even the "appearance" of irregularity on the Court was to be avoided so that confidence in our judiciary would not be eroded. At no time did the Court address that issue or make any comment about it.

However, <u>what</u> happened is no longer speculation or assumption; the <u>why</u> it was systematically done through the October 28, 1993, Denial of Motion for Reconsideration, is still unanswered, but we think the inescapable conclusion is that the

disqualifications were engineered; that it was done with prejudice or extreme anti-masonic sentiment which is the same thing, intended to essentially guarantee a decision by the Court against the freemasons. It cannot be reasonably considered that the arrangement of the Court was mere coincidence or happenstance.

On January 11, 1990, the Supreme Court, without comment, transferred this case to the Court of Appeals of Georgia; five days less than ten months later, the Court issued its order designating five Superior Court Judges and a Senior Appeals Court Judge, Arnold Shulman, to replace the six regular judges who were disqualified, and announced the Court's composition. Copy of the Court's order of October 22, 1990, referred to above, was not sent to the parties and did not mention "disqualifications" in that instrument or

give any reason for the action (Appx. C), or that six of the regular Court members had been disqualified. This was not disclosed or known until the judgment of the Court of Appeals of November 27, 1990, was entered (198 Ga.App. 147). Oral argument was denied although timely requested. Motion for Rehearing was denied (Appx. K).

THESE SIX DISQUALIFIED JUDGES WERE, OR HAD PREVIOUSLY BEEN MEMBERS OF MASONIC LODGES IN GEORGIA.

THE FIVE SUPERIOR COURT JUDGES AND THE SENIOR APPEALS COURT JUDGE APPOINTED TO SIT IN THE PLACE OF THOSE DISQUALIFIED WERE ALL NON-MASONS.

During the year 1990 when this case was transferred by the Supreme Court to the Court of Appeals of Georgia, the duly elected and serving Judges of the Court of Appeals of Georgia were:

GEORGE H. CARLEY (Master Mason, Pythagorus Lodge No. 41, Decatur) DISQUALIFIED

BRASWELL D. DEEN JR. (Master Mason, Bacon Lodge No. 56, Alma, demit, 1978) DISQUALIFIED

WILLIAM LEROY MCMURRAY JR. (Fellowcraft Mason, Washington Lodge No. 19, Cuthbert, demit, 1964) DISQUALIFIED

HAROLD R. BANKE (Fellowcraft Mason, Forest Park Lodge No. 399, Atlanta) DISQUALIFIED

*A. W. BIRDSONG (Entered Apprentice Mason, Union Lodge No. 28, LaGrange)

JOHN W. SOGNIER (Master Mason, Landrum Lodge No. 48, Savannah) DISQUALIFIED

MARION T. POPE JR. (Master Mason, Canton Lodge No. 77, demit, 1989) DISQUALIFIED

DOROTHY TOTH BEASLEY (Non-Mason)

CLARENCE COOPER (Non-Mason)

Judges who sat in place of those disqualified were:

WILLIAM J. SMITH (Non-Mason) Superior Ct., Chattahoochee

K. DAWSON JACKSON (Non-Mason)
Superior Ct., Gwinnett

THOMAS DAY WILCOX (Non-Mason)
Superior Ct., Macon

ROBERT G. WALTHER (Non-Mason)
Superior Ct., Rome

DANIEL M. COURSEY JR. (Non-Mason)
Superior Court, Stone Mountain

ARNOLD SHULMAN (Non-Mason), Sr.
Judge Ct. of App.)

*Please note that Judge A. W. Birdsong, a regular member of the Court, and who wrote the dissenting opinion joined Masonry (many years ago), was initiated as an Entered Apprentice but proceeded no further in the Order. If he were asked, "Are you a Mason?", his answer "No" would be truthful but he obviously knew enough about Masonary and its quiet benevolent works to write the dissenting opinion which more accurately states the truth of the matter than that of the majority. The majority opinion in that judgment was based upon inaccuracies of fact not stated

anywhere in the evidence before that Court, the basis of the majority opinion was obviously grounded upon an erroneous predisposition or prejudgment of the facts.

It cannot be stated for a certainty why "Bell and Benham, J. J. disqualified" (Richard Bell and Robert Benham) on the grant of the Application of Certiorari in April of 1991, the data being unavailable to us. However, it is known that in the denial of Certiorari and the Motion for Reconsideration of October 5, (Appx. L) and October 28, 1993 (Appx. M), Justice Benham was again disqualified along with Justice Carley, a known Mason, who had moved up from the Court of Appeals to the Supreme Court of Georgia in March of 1993. It is fair to assume Justice Benham is in some way masonically connected.

The sitting members of the Supreme Court of Georgia when the Application for

Writ of Certiorari of July 29, 1993, and its denial of October 8, 1993, and denial of Motion to Reconsider of October 28, 1993, were all non-masons with the known exception of Justice George H. Carley, and the possible exception of Justice Robert Benham, both of whom were disqualified in those decisions (Appx. L and Appx. M).

The three Judge panel of the Court of Appeals of Georgia which reversed the trial court's judgment of October 2, 1993, (Appx. A) are all known to be non-masons (Appx. B). They were: Edward H. Johnson, G. Alan Blackburn, and J. D. Smith. Judge Frank M. Hull, Atlanta Judicial Circuit, and Judge Michael Stoddard, Cobb Judicial Circuit, who were substituted for "Benham and Carley disqualified" in denial of the Certiorari and Motion to Reconsider in October 1993, are known non-masons (Appx. U).

The cases arose O.C.G.A. Sec. 48-5-41(a)(4) (Appx. N).

REASONS FOR GRANTING THE WRIT

Can there be any legal or ethical grounds, or reasons sufficient to justify the exclusion or disqualification of all the known Masons on an Appeals Court Panel where the case involves taxability of Masonic property under a valid state statute?

We strongly assert there is not. Nor would it be valid or reasonable or constitutionally permissible if it involved the person of an individual Mason, or his reputation, or that of the Masonic Order itself.

There is no bond or covenant between Masons whether commoner or a Judge, which would cause them to favor another Mason, or to protect or cover him in wrong doing, but to the contrary; there is no bond or covenant between Masons whether commoner or a Judge, which would encourage bias in the

individual on behalf of a masonic lodge, an individual, or the entire body of Masonry, if the act or goal of the Movant was immoral or unethical, wrong or unjust. The principals taught and insisted upon in Masonry do not condone lack of integrity, deception or dishonesty of any sort, in fact it condemns and sanctions it. Only a very small fraction of the Masonic membership in Georgia (and elsewhere) are ever subjected to disciplinary action for wrong doing; if all the groups or classes of people in the country were as law abiding or caring as the Masons, crime would not be a problem in America. But being a Mason does not <u>cause</u> this phenomena, but rather the sincere belief in the principles it (also) teaches, is the cause, whether Mason or not.

And, having reached the pinnacle of the law profession as a Judge, and how much

less-so an Appellate Judge or Justice, can it be credibly asserted that such Judge brings along a bias in favor of Masonry, because he is or has been one; or a bias in favor of the Baptist Church because he is a Baptist or his mother was; or the Boy Scouts because he was one, or was a Scout Master for them. (Thomas vs. Northeast Georgia Council Inc., Boy Scouts of America, 241 Ga. 291) or a bias in favor of a sorority because she was a member, or has a daughter who is or was in a sorority? Mu Beta Chapter and House Corp. vs. Davison, 192 Ga. 124). It is not a valid argument. There were no mass disqualifications in those cases. A Judge or Justice who also happens to be a Mason is less likely to err in favor of Freemasonry, than one, although sincerely, errs against Freemasonry out of lack of knowledge or ignorance of Masonry's purpose

and good works. Masonry has seldom sought publicity as to its work, and less so has it vocally responded to its critics and enemies. This silence now works against the Masonic order. Whether the disqualifications in this case were thought to be "politically appropriate" at this time, or due to some anti-masonic sentiment in keeping with the recent Southern Baptist Convention Resolution (and prior one) is not known for a certainty but given the Courts' "in house" policy of nondisclosure, and what appears to be a systematic exclusion of the known Masons in the decisions of the York Rite cases 198 Ga. App. 147 (Appx. B) and 209 Ga. App. 359 (Appx. A) with no non-masons being excluded and no other Masons being included in the panel of nine, gives good reason to conclude that irregularity of constitutional magnitude occurred in the

Court's composition, and was repeated thereafter, that it was no coincidence, but was planned and executed, and because those regular Court members were or had been Masons. We assert this conclusion is in fact inescapable.

When this sort of conduct is engaged in, can it ever be said with certainty that it is "harmless error" and therefore constitutionally permissible? We say it cannot. Whatever the outcome of a case for or against either party, any tampering with the procedural aspects of a case denies at least one of those parties the equal protection of the law and due process, if due process, also encompasses "proper" process. When the legal process is tampered with or is covertly altered or arranged to bring about, or make more likely, a desired result we find the glaring example of "rule by men and not by

laws," against which mankind has struggled at least since the year 1066, and which the architects of the United States Constitution strove to proscribe and which was adopted in principle by the State of Georgia. The guarantees built into this sublime instrument are not less viable or enforceable merely because they have been many times successfully circumvented, especially in our elections process by men whose mania for success and approval so greatly outweighed the virtue or integrity that they were willing to yield at the alter of pragmatism any remaining sense of right and wrong they possessed.

The social contract forged by our Constitution is the basis of law today as it was in 1787 and its too-often circumvention does not make that contract unenforceable or inappropriate; it should make those vigilant guardians of those

ideals even more vigilant, and when discovered, or made so glaringly apparent as in this case, the illicit conduct should be disapproved or admonished and the error corrected.

Would it ordinarily be expected that two thirds of the panel of nine Judges of the Court of Appeals would voluntarily recuse themselves from considering this case? We say not. If part, or all of them had done this then the word "recuse" does not appear in the judgments. That masonry does not counsel or require any special bias or prejudice of its members would be well known to those judges. We assert that in the ten and one-half months the case was docketed and lodged in the Court of Appeals there were discussions and disagreements on the question of disqualifications. We think the lapse of time from docketing to date of Judgment indicates the

reasonableness of this assertion. This writer knows of no case in the Georgia Case Law where so many Judges and Justices were disqualified. Probably the most hotly contested, highly publicized case in the State of Georgia, was the "Two Governors of Georgia" incident of 1946, Thompson Lt. Gov. et al. vs. Talmadge, 201 Ga. 867, 41 SE2d 883 (1947), in which Herman Talmadge (son of Eugene) was "elected" Governor by the Georgia General Assembly after Eugene Talmadge had died following his election by the people but before his inauguration. M.E. Thompson had been elected Lt. Governor in 1946. Some of the Supreme Court Justices had been appointed by Eugene Talmadge, who had been Governor of Georgia on more than one occasion prior to his last election and death, as had Ellis Arnall who succeeded Talmadge as Governor. Because of the prominence of the parties involved it

became a media circus of that day and a large majority of the citizens of Georgia became emotionally involved and vocal. If ever the question of bias or prejudice among the court members could be reasonably suspected, it should be in Thompson vs. Talmadge, infra.

Yet, no disqualifications took place on that Court although there were two dissents. There have been other less volatile cases in Georgia, but none with such a large number of disqualifications as in this case.

Also, we think the unprecedented action of the 11th Circuit Court of Appeals is clearly distinguished from this case. The Atlanta "Constitution" of February 27, 1991, Sec. D, pg. 4, stated that "all Federal Judges in the 11th Circuit voluntarily removed themselves from hearing the case." This is understandable since

the victim of the alleged crime was a Judge on the 11th Circuit, known and perhaps loved or venerated by his fellow Judges, but we assert that also present was the question of possible "appearance of irregularity" in the Court reviewing Walter Leroy Moody Jr's. appeal.

We can conceive no compelling or even reasonable ground for the disqualifications in this case other than a design to engineer the judgment however well meaning the "engineer" might have been. Actually, all of our prejudices are without sound reasoning although all of us indulge in this fallacy to some extent about some group or premise and without bothering to inquire as to the truth. In America we are not unique in possessing this fault.

Historically in this country, at least since the 1830's, there have been from time to time anti-masonic movements

such as in the "Morgan Affair" and the National "Anti-Masonic (Political) Party"; no other fraternal order has been so maligned. A small minority of individuals in the recent Southern Baptist Convention (alleged 8,000,000 members) again took up the hue and cry against Masonry creating widespread discussion and controversy, fueling anew the anti-masonic sentiments among a great many people, this time based upon the erroneous premise that freemasonry was incompatible with Christianity. The fact that the Resolution failed was not widely publicized, it not being "sensational" news anymore.

We think freemasonry, its works, its ideals, and its presence in Georgia and the United States is not disapproved by a majority of our citizens nor by any of those who benefit from its various charities. The 85,000 masons in Georgia

together with wives and children number not less than a quarter-million people directly effected by this case. But let us assume the masons were disapproved by the majority. Would they be less entitled to equal protection and due process than the Abraham Lincoln Brigade or the Nazi Party? We say not.

Is it constitutionally permissible to cast aside the case because it is unimportant, involving taxability - "only money"? We say not.

Can we say it is ethically appropriate because it is or may be politically expedient? We say not.

Prior to the York Rite cases, the Georgia Appeals Courts have interpreted O.C.G.A. Sec. 15-1-9.1 and O.C.G.A. 15-1-8 (Appx. P) (formerly Ga. Code Sec. 24-102) setting forth grounds for disqualification,

which we contend the Appeals Courts did not follow in the York Rite cases.

In Blakeman vs. Harwell, 198 Ga. 165, 31 SE2d 50 (1944), the Court said "1 (a) No justice of the Supreme Court, merely because he is a member of the Masonic Order, is disqualified in participating in the decision of a cause where an interested party is the Scottish Rite Hospital for Crippled Children..."

The Court further said (p. 173) "In order to disqualify a Judge, there must exist a ground authorized by law to disqualify him; it is not for the Courts to add other grounds of disqualification (Emp. ours).

"There is a Georgia statute which declares where a Judge or Justice is disqualified, Code Sec. 24-102 (now O.C.G.A. 15-1-8). The interest which by our Code will disqualify is a pecuniary

interest... "Both the Court of Appeals of this State and this Court have held that the statutory grounds of disqualification contained in this section are exhaustive."

And in Robinson vs. State, 86 Ga.App. 375 (1952), 71 SE2d 677, (1952), the Court said (p. 377) "Code Sec. 24-102, providing under what circumstances Judges shall be disqualified, specifies only matters in which they have a pecuniary interest or are related within the sixth degree to any party interested in the result of the matter. The statutory grounds named in this section are exhaustive."

In Mapp vs. The State, 204 Ga.App. 647, 420 SE2d 615 (1992), the Court dealt with the limitations of O.C.G.A. Sec. 15-1-8. The Court said "The grounds for recusal in Section 15-1-8 are exclusive and exhaustive, and Courts may not add other grounds of disqualification to those stated

in the statute. (With citations.)" See also Daniel vs. Yow, 226 Ga. 544, 176 SE2d 67 (1970), where the Court said, "Bias or prejudice of a judge, which is not based on interest either pecuniary or relationship to party within prohibited degree, affords no legal ground for disqualification."

In Dominquez vs. Enterprise Leasing Company, 197 Ga.App. 664, 399 SE2d 269 (1990), the Court dealt with O.C.G.A. Sec. 15-1-9.1, the authority under which the Georgia Court of Appeals selected the Judges to replace those disqualified in York Rite, as cited in its order of November 6, 1990, (Appx. C). Judge Birdsong, who wrote the opinion, appears critical of the use or application of O.C.G.A. Sec. 15-1-9.1. He says "this statute permits the mutual appointment of Judges by Judges to sit in every judicial office in this State, without apparent

limitation. (Emph. ours) It thus seems that if we had not enacted Rule 18(c) to prevent it, the Georgia Court of Appeals could request a Municipal Court Judge to appoint some physically qualified person to 'assist' us in the business of this Court, without regard to the Constitutional provisions for a public election of Court of Appeals Judges and for appointment by the Governor to fill vacancies... This unreigned method of administering the judicial business of a Court, and its disaffection of the electors or of parties proceeding in the Court, do not seem to be a sagacious result of the desire for judicial 'flexibility'." (See Appx. Q) It does not appear that the Georgia Supreme Court has addressed or interpreted O.C.G.A. Sec. 15-1-9.1, but it has addressed the limitations of O.C.G.A. Sec. 15-1-8, the

grounds for judicial disqualification, and has not expanded those limitations.

We assert the grounds for disqualification are exhaustive and exclusive; the grounds limitations are as incumbent upon the Court members, as it is that "Courts may not add other grounds of disqualification". A Justice or Judge should not ask to be recused unless the "ground" is clearly within the parameters of O.C.G.A. Sec. 15-1-8. This should not be done for political or other reason outside that statute.

It appears other jurisdictions follow the rule as to fraternal orders. Odom et al. vs. Langston et al., 205 SW2d 518 (Supreme Court of Missouri 1947), says: "The fact that some Judges were Masons did not disqualify them from passing on construction of a trust naming Masonic Home as one of the beneficiaries".

In State vs. Sams, 210 SE2d 916, 75 A.L.R.3d 1017 (W.Va. 1975). The Defendant allegedly committed burglary of the Elks Club, the Court stated the Judge was not disqualified by reason of his membership in the Elks Club.

We know of no good, valid or legal reason for the disqualifications, which began in the Judgment of the Georgia Court of Appeals of November 27, 1990, (198 Ga.App. 147) and continued through the Supreme Court's denial of Reconsideration of Denial of Certiorari of October 28, 1993, in excluding the known Masons and including only (now) known non-Masons to review the case. It resulted in Judgment against these Petitioners. The (now) obvious arrangement of both Georgia Appellate Courts in this case cannot be said to be harmless error, or Constitutionally permissible.

The question of denial of equal protection of the law under the State and Federal Constitutions has been alleged throughout the course of this case, in that the Tax Assessor, based on his own personal agenda, placed these Masonically owned properties on the tax rolls after over one hundred years of exemption, while still allowing the exemption to like organizations, some of them clearly being non-charitable entities, and these organizations are still being so favored to date hereof. However, we are not actively pursuing that feature in this Application for Certiorari.

CONCLUSION

We close by saying that equal treatment under the law should never be consciously denied by our judiciary because the litigant is one of an identifiable class or group whether it be racial, religious, fraternal or other such class. The Petitioners here were clearly identifiable from the outset by the case caption as a part of the Masonic Order. However well intentioned the disqualifications by the Court may have been, the effect of it worked a denial of equal protection of the law and loss of Petitioners' case. To argue that disqualification of all Masons on the Court and replacing them solely with non-masons was mere coincidence is beyond belief.

We pray that the judgment of the Court of Appeals of Georgia in its decision, York Rite Bodies of Freemasonry of Savannah et

al. vs. Board of Equalization, 198 Ga.App. 147, 401 SE2d 30 (1991), and in York Rite Bodies of Freemasonry of Savannah et al. vs. Board of Equalization, 209 Ga.App. 359, 433 SE2d 299 (1993), and denial of Certiorari by the Georgia Supreme Court dated October 5, 1993, be reversed as being null and void and the findings and judgment of the trial court in its Order dated October 2, 1992, be affirmed.

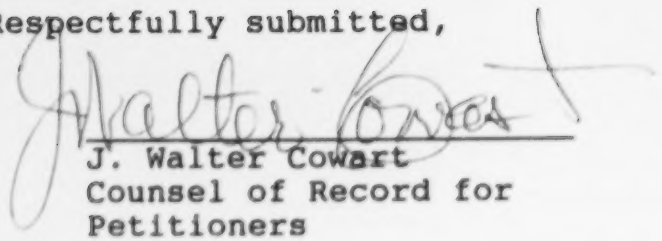
(Appx. T)

In the first alternative, that the case be reviewed on its merits and be reversed;

In the second alternative, that the case be reversed and remanded for proper handling by the Appellate Courts of Georgia;

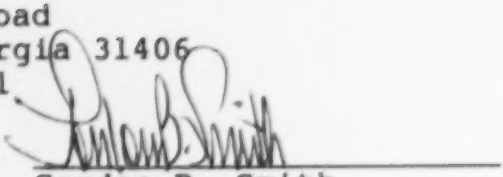
And such other relief as in this Honorable Court's judgment is just and proper.

Respectfully submitted,



J. Walter Cowart
Counsel of Record for
Petitioners

7220 Waters Road
Savannah, Georgia 31406
(912) 355-5111



Gordon B. Smith
Counsel for Petitioners

1820 Abercorn Street
P.O. Box 10041
Savannah, Georgia 31406
(912) 233-8003